



# California Fair Political Practices Commission

February 13, 1987

Wes Bannister  
Huntington Beach  
City Councilmember  
P.O. Box 190  
Huntington Beach, CA 92648

Re: Your Request for Advice  
Our File No. A-87-051

Dear Mr. Bannister:

We have received your request for advice dated February 3, 1987 regarding your duties under the conflict of interest provisions of the Political Reform Act.<sup>1/</sup> This letter is a follow-up to our advice letter dated February 9, 1987 (No. A-87-030).

## QUESTION

An oil company is seeking approval from the city council to consolidate oil drilling activities in an area of approximately 20 city blocks. Are you prohibited from participating in the city council's decision?

## CONCLUSION

You may not participate in the decision if, at the time of the decision, the sale of oil rights by your client has not been completed or the sale involves any contingencies related to the city council's decision.

## FACTS

Angus Oil Company ("Angus") is attempting to consolidate oil activities in an area of approximately 20 city blocks. Angus' plan is to purchase oil rights in the area, abandon the

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<sup>1/</sup> Government Code Sections 81000-91015. All statutory references are to the Government Code unless otherwise indicated. Commission regulations appear at 2 California Administrative Code Section 18000, et seq. All references to regulations are to Title 2, Division 6 of the California Administrative Code.

existing well sites scattered over the area, and consolidate activities by drilling approximately 70 new wells on a single site.

You are the 100 percent owner of an insurance agency. Your agency insures the Huntington Beach Company ("Huntington") and has received income of \$250 or more from Huntington during the past 12 months. Huntington owns a portion of the oil rights in the area in which Angus is seeking to consolidate activities.

Our February 9, 1987 advice letter, was based on information you provided which indicated that Huntington had recently accepted an offer to sell its oil rights to Angus for approximately \$3 million. We advised that you could participate in the city council's decision if, at the time of the decision, the sale was completed and did not involve any contingencies related to the city council's decision. You have now asked if you must disqualify from the decision if you are provided with a letter from Huntington indicating that they are not going to sell their oil rights to Angus.

#### ANALYSIS

Section 87100 prohibits a public official from making, participating in, or attempting to influence a governmental decision in which he knows or has reason to know he has a financial interest. A public official has a financial interest in a decision if it is reasonably foreseeable that the decision will have a material financial effect, distinguishable from its effect on the public generally, on:

(c) Any source of income, other than gifts and other than loans by a commercial lending institution in the regular course of business on terms available to the public without regard to official status, aggregating two hundred fifty dollars (\$250) or more in value provided to, received by or promised to the public official within 12 months prior to the time when the decision is made.

Section 87103(c).

In the present situation, Huntington is a source of income to you of \$250 or more. (Section 82030(a).) Accordingly, you

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may not participate in any decision which will have a reasonably foreseeable material financial effect on Huntington.

According to your previous letter, Huntington's failure or success in completing the sale of its oil rights to Angus will have a \$3 million effect on its gross revenues for the fiscal year. Regardless of Huntington's size, this effect is considered material. (Regulation 18702.2.) Therefore, if the city council's decision will have a reasonably foreseeable effect on whether Huntington consummates the sale of its oil rights to Angus, you may not participate in the decision.

As we indicated previously, we believe that if the sale of Huntington's oil rights to Angus has not been unconditionally completed at the time the city council makes its decision regarding whether to allow consolidation of oil activities, it is reasonably foreseeable that Angus will choose not to complete the purchase of the oil rights if the consolidation is not approved. (See, Thorner Opinion, 1 FPFC Ops. 198 (No. 75-089, Dec. 4, 1975). Although we have been provided limited facts about the possible purchase of Huntington's oil rights by Angus, it is apparent that negotiations for the sale are still occurring.<sup>2/</sup> In this context, we believe that the decision has a reasonably foreseeable effect on the likelihood that the sale will occur.<sup>3/</sup> Accordingly, you may not participate in the city council's decision if, at the time of the decision, the sale of oil rights by your client has not been completed or the sale involves any contingencies related to the city council's decision.

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<sup>2/</sup> In a telephone conversation on February 9, 1987 with Mike Banzhas, attorney for Angus, I was informed that Angus and Huntington were meeting on that afternoon to discuss the sale.

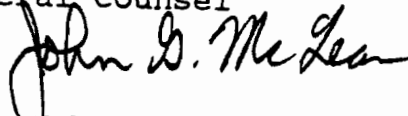
<sup>3/</sup> In the Legan Opinion, 9 FPFC Ops. 1, 9-10 (No. 85-001, August 20, 1985), the Commission specifically rejected the argument that a property owner's intended use, as opposed to the permitted use, of real property should be considered when the foreseeable effects of a governmental decision are analyzed.

Wes Bannister  
February 13, 1987  
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If you should have any questions, please contact me at  
(916) 322-5901.

Sincerely,

Diane M. Griffiths  
General Counsel

A handwritten signature in cursive script, reading "John G. McLean". The signature is written in dark ink and is positioned over the typed name and title of the sender.

By: John G. McLean  
Counsel, Legal Division

DMG:JGM:plh

cc: Gail Hutton, City Attorney



BANNISTER & ASSOCIATES  
INSURANCE

JAN 19 5 57 AM '87

January 14, 1987

Mr. John G. Mc Lean  
Counsel, Legal Division  
California Fair Political  
Practices Commission  
428 J Street, Suite 800  
P.O. Box 807  
Sacramento, California 95804-0807

Re: Conflict of Interest  
Your Letter of January 8, 1987

Dear Mr. Mc Lean:

I have read, re-read, and continually re-read the letter that you sent to me on January 8th. I know that an attorney has to be very careful in what he says, and that your indications cannot be definite or provide exacting conditions, but it is a very difficult letter to understand with all of the superlatives and subjective concepts expressed. As we get more into it, I will need to ask you to more clearly define statements such as, "significantly", "other interests", "mere possibility", and etc. These terms leave some areas of interpretation open that I think should be more specifically defined.

In the meantime, in order to better understand what you have tried to express in your letter, I have tried to diagram your letter. The diagram that I have come up with is attached to this letter. Please review it, and if you agree with it, initial it and return it to me. If you do not agree with it, make any changes or notations that you feel are important, initial it and return it to me so that I might have it re-prepared and sent back to you for approval. If this is indicative of what you have said in your letter, then I will present this to our City Attorney, thereby to our legal department, to allow them to use it as a general interpretation for my future activities and for referral on to you for questioning.

In the meantime, you are going to be receiving a request from our City regarding Angus Oil and the relocation of the wells in the downtown area that we discussed briefly before. A new wrinkle has reared its ugly head which needs your interpretation. It would appear that Angus Oil is in the process of purchasing some of the oil rights in the area, which may or may not be those of my insured, however, I am not exactly sure whether the purchase of those oil rights creates a conflict of interest since they would be purchased as a matter of expediency rather than a long term pay out based on the withdrawal of the oil. It is also entirely possible that Angus would buy those oil rights whether they were relocating the wells or not, since it is an area that has been productive for a number of years. At any



# California Fair Political Practices Commission

February 11, 1987

Wes Bannister  
Councilmember  
P.O. Box 190  
Huntington Beach, CA 92648

Re: 87-051

Dear Mr. Bannister:

Your letter requesting advice under the Political Reform Act was received on February 9, 1987 by the Fair Political Practices Commission. If you have any questions about your advice request, you may contact John G. McLean, an attorney in the Legal Division, directly at (916) 322-5901.

We try to answer all advice requests promptly. Therefore, unless your request poses particularly complex legal questions, or more information is needed, you should expect a response within 21 working days. You also should be aware that your letter and our response are public records which may be disclosed to the public upon receipt of a proper request for disclosure.

Very truly yours,

Diane M. Griffiths  
General Counsel

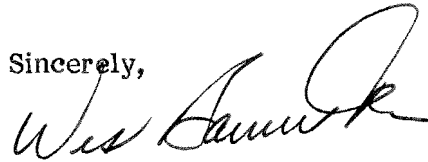
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rate, I am asking the City Attorney and the Mayor of our City to present the question to you for your interpretation and decision, which will then allow me to vote on the 20th on this very important issue. Since I am the pivotal vote, at least it appears so at this time, it is extremely important that this decision be back to us prior to that time so that we can either progress, or not progress, which every the case may be.

Thank you very much for your very nice letter and I hope that this diagram helps both of us identify, at least for my benefit, what you are trying to identify as conflict of interest.

Thank you very much.

Sincerely,

A handwritten signature in black ink, appearing to read "Wes Bannister". The signature is fluid and cursive, with a large, sweeping "W" and a long, horizontal stroke extending to the right.

Wes Bannister

WB/bu

cc: Gail Hutton, City Attorney